



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the
Request for Opinion concerning
the conduct of LYNETTE BOGGS,
former Member, Board of Commissioners
Clark County, State of Nevada.**

Request for Opinion No.: 06-70

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

The following is the Executive Director's recommendation based on the Investigator's report (TAB A).

In May 2005, Lynette Boggs (Boggs) purchased an unimproved parcel of real estate in Arizona from *Flannery & Allen, LLC*, owned by Lori Mardian, Leonard Mardian, and Susan Mardian (Mardian) using a \$100,000 loan and a \$25,000 buyer credit from *Flannery & Allen, LLC*.

At an August 2006 Clark County Board of Commissioner's meeting, Boggs voted on a consent agenda item relating to a business owned by Mardian, but Boggs allegedly failed to disclose information concerning the real estate purchase. Boggs also failed to disclose the loan and buyer credit on her *Financial Disclosure Statement(s)*.

Boggs allegedly violated:

- NRS 281A.420.2 when she voted on the matter involving the business owned by Mardian after receiving the loan and buyer credit from Mardian.
- NRS 281A.420.4 when she failed to disclose information regarding the property purchase, loan, and buyer credit.
- NRS 281A.620 when she failed to disclose the loan and the buyer credit on her *Financial Disclosure Statement(s)*.

A. JURISDICTION:

In her capacity as a member of the Clark County Board of Commissioners, and "ex officio" member of the Clark County Liquor and Gaming Board, Boggs was a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

Boggs submitted a *Waiver of Statutory Time Requirement* form on October 12, 2006.

B. RELEVANT STATUTES AND OPINIONS:

NRS 281A.160 “Public officer” defined.

1. “Public officer” means a person elected . . . to a position which is established by the Constitution of the State of Nevada . . . and which involves the exercise of a public power, trust or duty.

NRS 281A.420 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

2. . . . in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

4. A public officer . . . shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

➔ without disclosing sufficient information concerning the gift, loan, . . . to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan . . . [S]uch a disclosure must be made at the time the matter is considered. If the officer . . . is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body.

NRS 281A.620 Contents; distribution of forms; costs related to production and distribution of forms.

1. Statements of financial disclosure . . . must contain the following information concerning the candidate for public office or public officer:

(c) A list of the specific location and particular use of real estate, other than a personal residence:

(1) In which he or a member of his household has a legal or beneficial interest;

(2) Whose fair market value is \$2,500 or more; and

(3) That is located in this State or an adjacent state.

(d) The name of each creditor to whom he or a member of his household owes \$5,000 or more . . . ; and

(e) If the candidate for public office or public officer has received gifts in excess of an aggregate value of \$200 from a donor during the preceding taxable year, a list of all such gifts, including the identity of the donor and value of each gift . . .

Opinion No. 99-56; opinion request of Bruce L. Woodbury, Clark County Commissioner.

In this matter, Woodbury requested the Commission to revisit the issues considered in its previous Opinion No. 98-54. That Opinion required Woodbury to disclose his relationship to his son, and his son’s relationship to the law firm which employs his son. The previous Opinion also required Woodbury to abstain from participating in and voting upon all matters before the Clark County Commission involving applicants represented by the law firm.

In Opinion No. 99-56, the Nevada Commission on Ethics determined that Woodbury's decision to abstain [i]n a particular matter . . . involves a case-by-case evaluation of relevant factors. Such factors include but are not limited to his son’s compensation arrangements with the law firm; his son’s responsibilities with the law firm, including client development; his son’s

RELEVANT STATUTES AND OPINIONS (CONTINUED)

involvement with the matter which is before the County Commission; his son's involvement with the client represented by the law firm (whether or not limited to the issue before the county commission); and the compensation arrangements of the law firm with the client. Unless such information is made available to Woodbury, it will be difficult, if not impossible, for Woodbury to make an appropriate disclosure and an informed evaluation of whether to abstain. In these circumstances, Commissioner Woodbury, of course, acts at his peril in two respects: (a) deciding what detailed disclosures will be sufficient; and (b) deciding whether the specific matter also warrants abstention.

C. RECOMMENDATIONS:

On the issue of disclosure and abstention, sufficient credible evidence does not exist to support a finding the Boggs violated the provisions of NRS 281A.420.2 and NRS 281A.420.4. It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to these provisions.

On the issue of her *Financial Disclosure Statement(s)*, sufficient credible evidence supports a finding the Boggs violated the provisions of NRS 281A.620. Boggs was required to disclose the loan and buyer credit on her *Financial Disclosure Statement(s)* relative to her property purchase. It is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of NRS 281A.620.

D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):

On September 28, 2006, the Nevada Commission on Ethics (NCOE) received a Request for Opinion (complaint) from James Bassett (Bassett). On October 23, 2006, the Office of the Nevada Secretary of State (SOS) referred a letter of complaint from Bassett dated September 26, 2006 to the NCOE. The following is a summary of both complaints:

On August 22, 2006, Chase Heu (Heu) came before the Clark County Liquor and Gaming Licensing Board under agenda item 233. Heu was seeking a determination of suitability as a key employee for liquor and gaming for *Rainbow Tavern, LLC*, doing business as *Blackjack Lodge*. Lori Mardian and Susan Mardian own the *Blackjack Lodge*.

News stories published by the *Las Vegas Review-Journal* and the *Las Vegas Sun* in September 2006 indicated that Boggs had obtained a \$100,000 loan from Leonard and Susan Mardian to purchase land in the Mardians' master-planned community located in Arizona in May 2005. Boggs made no disclosure regarding her loan from the Mardians and voted to approve the agenda item at the August 2006 meeting.

Boggs disclosed her ownership of the Arizona property on her *Nevada Financial Disclosure Statement(s)*, but Boggs did not disclose the loan on the property that she obtained from the Mardians.

E. SUMMARY OF SUBJECT'S RESPONSE:

On November 14, 2006, Boggs submitted the Subject's Response to the complaint. The following is a summary of her response submitted by her attorney, John H. Mowbray, Esquire, regarding the allegation that Boggs should have disclosed her loan and abstained from voting at the August 2006 board meeting:

On or about May 17, 2005, Boggs and then-husband Steven McDonald purchased an unimproved parcel of real property located in Arizona, in the name of *LSAR, LLC*. The seller was *Flannery & Allen, LLC*, a Nevada limited liability company owned by Leonard Mardian, Lori Mardian, and Susan Mardian. As part of the \$125,000.00 purchase price, a \$100,000.00 promissory note secured by a deed of trust was executed by *LSAR, LLC* in favor of *Flannery & Allen, LLC*. The deed of trust regarding the promissory note was recorded in the Mohave County Recorder's office on June 21, 2005.

The matter that appeared on the August 22, 2006 consent agenda of the Clark County Liquor and Gaming Licensing Board meeting was a routine consent agenda item to refer Heu's application to the Las Vegas Metropolitan Police Department (LVMPD) for further investigation to determine Heu's suitability as a key employee for liquor and gaming.

Prior to Boggs becoming a member of the Clark County Board of Commissioners, a resolution was passed by the board to establish disclosure requirements regarding businesses that appear before the board of commissioners. The stated purpose of the resolution was to require that business entities disclose their ownership and financial interests to the board of commissioners on certain matters heard by the board. Following the guidelines of that resolution, Boggs' staff reviews upcoming agenda matters to screen for individuals and entities that would trigger disclosure and abstention issues. After being briefed by her staff, if a matter involved an individual or entity that required a disclosure, Boggs would make the appropriate disclosure and/or abstain from participating in the matter. In questionable cases, Boggs always sought the advice and counsel of the Clark County District Attorney's Office.

Prior to the August 22, 2006 liquor and gaming board meeting, Boggs' staff reviewed the agenda and materials submitted. There were 430 matters on the agenda. After a review of the materials submitted to Boggs in her capacity as an "ex officio" member of the Clark County Liquor and Licensing Board and her discussions with her staff, nothing was brought to her attention that was in any way related to *Flannery & Alien, LLC*, or its principals, the Mardians. Nothing was brought to Boggs' attention, because there was no nexus with *Flannery & Alien, LLC* or any mention of its principals with any matter to be heard by the Clark County Liquor and Gaming Licensing Board on August 22, 2006 that would require a disclosure or abstention by Boggs.

SUMMARY OF SUBJECT'S RESPONSE (CONTINUED)

In the instance of this complaint, the consent agenda item did not involve the *Rainbow Tavern, LLC* as a licensee. As such, information about the identity and background of the principals of the *Rainbow Tavern, LLC* was not required to be provided by staff to the board members, and board members had no requirement to either disclose a relationship or abstain from considering the matter. No relationship existed, or is alleged to have existed, between Heu and Boggs that would have triggered the need for a disclosure.

On October 15, 2007 and December 21, 2007, Ms. Boggs submitted supplemental responses to the NCOE *Notices of Additional Issues and Facts* letters dated August 17, 2007 and October 25, 2007. The following is a summary of responses submitted by her attorney regarding the allegation that Boggs failed to disclose on her *Nevada Financial Disclosure Statement(s)* the creditor and gift donor information related to her Arizona property:

Page one of the *Nevada Financial Disclosure Statement* form states:

"List each creditor to whom you or a member of your household owes \$5,000 or more [except (1) debt secured by a mortgage or deed of trust on real property which is not required to be listed below, and (2) debt for which a security interest in a motor vehicle for personal use was retained by seller] [NRS 281.571, Subsection 1(d)]:"

The *Nevada Financial Disclosure Statement* filed by Boggs on January 14, 2006, indicates a response of "N/A" meaning "not applicable."

Page two of the Nevada financial disclosure statement provides:

"List specific location and particular use of all real estate (other than personal residence): (1) in which you or a member of your household has a legal or beneficial interest; the fair market value of which is \$2,500 or more; and located in this state or an adjacent state [NRS 281.571, Subsection 1c]:"

On the form submitted by Boggs on January 14, 2006, the specific location of the real estate was listed in White Hills, Arizona, which is located in Mohave County, Arizona, and the particular use was designated as undeveloped land.

Boggs argues that not all creditors are required to be disclosed under NRS 281A.620. Disclosure of creditors are not required in certain situations if the debt is secured by a deed of trust or mortgage. In those cases, the debtor - creditor relationship is a matter of public record.

The White Hills land was listed and disclosed on the *Nevada Financial Disclosure Statement*. The White Hills land was subject to a deed of trust that was a public record. The deed of trust was recorded in the Mohave County Recorder's office on June 21, 2005. The deed of trust disclosed the creditor as *Flannery & Alien, LLC* and the amount of the debt as \$100,000.00.

SUMMARY OF SUBJECT'S RESPONSE (CONTINUED)

The identity of the creditor in the *Notice of Additional Issues and Facts* dated August 17, 2007 was a matter of public record. As a matter of public record, the identity of the creditor and the amount indebted was disclosed as a matter of law (see N.R.S. 111.3201 and its Arizona counterpart, AZ 33-416).

The real property is unimproved and has no paved roadways, infrastructure, water, power, septic or telephone utilities to the site. Because these amenities were not available, potential buyers in the White Hills development were given credit for the lack thereof. As memorialized in the offer and acceptance agreement: "Buyer shall receive a credit in the amount of TWENTY-FIVE THOUSAND and no/100 DOLLARS (\$25,000.00) for installation of water, power, septic and telephone." Escrow closed on or about June 21, 2005, and Boggs account was credited the sum of \$25,000.00.

The \$25,000.00 Installation credit was not a gift. A gift is a voluntary transfer of property by one to another without any consideration or compensation. In the matter at hand, the installation credit was given because of the lack of utilities to the site. Nothing in the record suggests that any proposed buyer of the real property near the subject property was not given the same terms and conditions. Because the installation credit was part of the consideration for the sale and not shown to be unique to this transaction, there is no basis to suggest that Boggs discharge of her public duties was impaired, and there was no requirement of Boggs to list the installation credit on her *Nevada Financial Disclosure Statement*.

F. INVESTIGATIVE ACTIVITIES:

The investigator:

- Received *Waiver of Statutory Time Requirement* form on October 12, 2006 (**TAB A**).
- Reviewed Request for Opinion (complaint) 06-70 received September 28, 2006 from Bassett, including the following (**TAB B**):
 - Page one and page forty-six of the Clark County Liquor and Gaming Licensing Board meeting agenda for August 22, 2006.
 - An undated, one page document containing minutes for the consent portion of the August 22, 2006 agenda of the Liquor and Gaming Licensing Board.
 - Two pages of the transcript from the August 22, 2006 meeting of the Liquor and Gaming Licensing Board.
 - Information from the Nevada Secretary of State website regarding an entity known as *Rainbow Tavern, LLC*.
 - News articles from the *Las Vegas Sun* and *Las Vegas Review Journal* online.
- Reviewed a letter from the SOS, dated October 23, 2006, regarding a complaint letter the SOS received from Bassett. The complaint includes the following (**TAB C**):
 - The *Nevada Financial Disclosure Statement* filed by Boggs on May 22, 2006.
 - The above-mentioned news articles.

INVESTIGATIVE ACTIVITIES (CONTINUED)

- Reviewed response received November 14, 2006 from Boggs' attorney, including the following **(TAB D)**:
 - Declaration of Derek Dubasik, assistant manager of the Clark County Department of Business License Operations.
 - Declaration of Donna M. Rainone, Clark County liaison for Boggs.
 - Confidential staff recommendations regarding the Clark County Liquor and Gaming Licensing Board meeting for August 22, 2006.
 - Clark County Liquor and Gaming Licensing Board agenda for August 22, 2006.
 - Declaration of Boggs dated November 10, 2006.
 - Clark County Board of Commissioners resolution regarding disclosure requirements adopted June 18, 2002.
 - Recorded copy of deed of trust dated May 17, 2005 regarding the Arizona property.
- Sent *Notices of Additional Issues and Facts* to Boggs' attorney **(TAB E)**:
 - August 17, 2007 regarding disclosure of creditor information on Boggs' *Nevada Financial Disclosure Statement(s)* filed subsequent to a deed of trust dated May 17, 2005, relating to the Arizona property.
 - October 25, 2007 regarding the \$25,000 credit Boggs received relative to the acquisition of property located in Arizona.
- Reviewed supplemental responses to *Notices of Additional Issues and Facts* received October 15, 2007 and December 21, 2007 from Boggs' attorney, including the Arizona real estate transaction documents **(TAB F)**
- Reviewed SOS records relating to the *Rainbow Tavern, LLC*, *Blackjack Lodge*, and *Flannery & Allen, LLC* **(TAB G)**
- Reviewed *Nevada Financial Disclosure Statements* filed by Boggs on January 15, 2005, January 14, 2006, May 22, 2006, and January 18, 2007 **(TAB H)**
- Sent letter dated January 4, 2008 to Nevada Title Company regarding transaction buyer credit; received e-mail response on January 7, 2008 **(TAB I)**

G. CONCLUSIONS AND RECOMMENDATIONS:

Sufficient credible evidence does not exist to support a finding that Boggs violated the provisions of NRS 281A.420.2 or NRS 281A.420.4. The action taken by Boggs was a procedural vote on a routine agenda item listed as "consent agenda LVMPD application referrals." Although the *Rainbow Tavern, LLC* doing business as *Blackjack Lodge*, 6200 South Rainbow Boulevard is listed on the agenda item, the purpose was to refer Heu to the LVMPD for further investigation to determine his suitability as a key employee for liquor and gaming.

County staff assigned to Boggs reviewed the agenda and ancillary materials and found that no relationship existed between Boggs and Heu. Information about the identity and background of the principals of the *Rainbow Tavern, LLC* was not provided by staff to Boggs, so Boggs had no requirement to either disclose a relationship or abstain from considering the matter.

CONCLUSIONS AND RECOMMENDATIONS (CONTINUED)

It is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of NRS 281A.420.2 or NRS 281A.420.4.

Sufficient credible evidence does exist to support a finding that Boggs violated the provisions of NRS 281A.620. Boggs was required to disclose the \$100,000 loan and the \$25,000 buyer credit on her *Financial Disclosure Statement(s)* relative to her Arizona property. NRS 281A.620.1(d) requires a public officer to disclose the name of each creditor to whom the public officer or a member of the public officer's household owes \$5,000 or more. One exception is that a public officer is not required to disclose a debt secured by a mortgage or deed of trust on a personal residence. NRS 281A.620.1(c). Although the \$100,000 loan is secured by a deed of trust, the property is undeveloped land in Arizona purchased by Boggs in May 2005. The property is not her personal residence. NRS 281A.620.1(e) requires a public officer to disclose gifts in excess of an aggregate value of \$200 from a donor, including the identity of the donor and value of each gift.

It is recommended that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of NRS 281A.620.

REPORT PREPARED BY:

Matt C. Di Orio

DATED:

1/4/08

MATT C. DI ORIO
SENIOR INVESTIGATOR

APPROVAL AND RECOMMENDATION BY:

Patricia D. Cafferata

DATED:

January 4, 2008

PATRICIA D. CAFFERATA, ESQ.
EXECUTIVE DIRECTOR